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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANABELLA HERMOCINDA
GRAMAJO DE LEON; ERVIN ASISMAI
DE LEON,

Petitioners,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 06-72420

Agency Nos. A096-169-175
A096-169-176

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted January 13, 2009^{**}

Before: O’SANNLAIN, BYBEE, and CALLAHAN, Circuit Judges.

Anabella Hermocinda Gramajo De Leon and Ervin Asismai De Leon, wife
and husband and natives and citizens of Guatemala, petition for review of the
Board of Immigration Appeals’ (“BIA”) order denying their motion to reopen. We

^{*} This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

have jurisdiction pursuant to 8 U.S.C. § 1252. We review for abuse of discretion the denial of motions to reopen or to reconsider, *Cano-Merida v. INS*, 311 F.3d 960, 964 (9th Cir. 2002), and de novo due process challenges, *Fernandez v. Gonzales*, 439 F.3d 592, 603 (9th Cir. 2006). We deny the petition for review.

The BIA did not abuse its discretion in denying Petitioners' motion to reopen because the BIA considered the evidence submitted regarding their children and Hurricane Stan's impact on Guatemala and acted within its broad discretion in concluding that the evidence was not material to demonstrating exceptional and extremely unusual hardship. *See* 8 C.F.R. § 1003.2(c)(1) (a motion to reopen "shall not be granted unless it appears to the [BIA] that the evidence sought to be offered is material").

Petitioners' contention that the BIA failed to consider some or all of the evidence they submitted with is unavailing because they have not overcome the presumption that the BIA did review the record. *See Fernandez*, 439 F.3d at 603.

PETITION FOR REVIEW DENIED.